



CITY OF NEWPORT BEACH

COMMUNITY DEVELOPMENT

February 13, 2014

Via Electronic Mail and United States Mail

Steve Kinsey, Chair
Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

California Coastal Commission
c/o Sea-Level Rise Work Group
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: Comments to the Draft Sea-Level Policy Guidance Document

Dear Chair Kinsey and Honorable Members of the California Coastal Commission:

This comment letter is provided to you on behalf of the City of Newport Beach. The threat of sea-level rise is of major importance to Newport Beach. Although our land area is less than twenty-four square miles, we have over forty-five miles of shoreline. Our shoreline communities, visitor-serving industry, world-class small-craft harbor, and natural habitats could potentially sustain damages costing billions of dollars to repair. Therefore, we support the California Coastal Commission's efforts to prepare a draft Sea-Level Rise Policy document ("Guidance Document").

It is prudent that the Guidance Document acknowledge that there is a high degree of scientific uncertainty as to the extent of sea-level rise and that the science is still evolving (Principles 2 and 3). We support the provision that the Coastal Commission will re-examine the best available science at least every 5 years or as needed with the release of new information on sea-level rise. It is equally important that the Coastal Commission also periodically re-examine and reassess this document to determine its value in providing practical guidance to agencies, local governments, and the public.

We acknowledge that the Guidance Document expands on provisions in the Coastal Act on avoiding significant coastal hazard risks (reflected in Principles 4, 5, and 8). Section 30253 of the Coastal Act reflects sound planning practices of minimizing risks to life and property in hazardous areas. And, while not specifically called for by Coastal Act Sections 30253 (or Sections 30235; 30001, 30001.5), it is also a sound planning practice to avoid areas with high geologic, flood, and fire hazards. However, if sea-level rise projections hold true, many coastal urbanized areas that will be subject to inundation. Using the "best available science on sea-level rise," as ascribed by the

Guidance Document, over 4000 properties could be subject to flooding in Newport Beach on the Balboa Peninsula, Balboa Island, and West Newport. This is not a simple matter of siting development to avoid a hazardous area. Entire communities will be at risk and avoidance is not an option. Under such scenarios, the interpreted Coastal Act's emphasis against protective devices will have to be reconsidered. Clearly, a more comprehensive approach is needed to address the wide range of coastal settings in the state. A differentiation between developed, urbanized areas and undeveloped, rural areas would be a good place to start.

Similarly, Principle 10's call for "the least environmentally damaging feasible alternatives and minimize hard shoreline protection" is appropriate. However, "feasible" needs to be emphasized when determining the least environmentally damaging shoreline protection alternative. The least environmentally damaging alternative could have minimal environmental impacts, but the costs associated with it would make that shoreline protection project infeasible. This is particularly true for the repair and maintenance of existing shoreline protective devices.

The provision for protection of public beach and recreational (Principle 9) properly addresses publically-maintained public access facilities. However, there is no guidance for the numerous public access facilities where a property owner, community association, corporation, or private organization has agreed to assume responsibility for maintenance. Additional guidance is needed for these situations and for the protection of the private developments that make these public access facilities possible.

Above all, the City is concerned that the Guidance Document will become a de facto regulatory document and mandated for implementation by local agencies as part of new or amended local coastal programs. Case in point, although the Guidance Document states that it is not a regulatory document, the Adaption Measures (Site Development Standards, Mitigation, Shoreline Management and Protection programs etc.) appear poised to become the threshold of review for new and amended LCPs under the guise of minimizing hazard risks. If so, the Guidance Document's recommendations for addressing sea-level rise will be regulatory and mandated for implementation by local agencies as part of new or amended LCPs. Of critical concern is the Guidance Document's failure to address how sea-level rise may involve private property rights and takings issues in specific cases. (Guidance Document, Page 20). It is not the issue of sea-level rise that gives rise to a takings claim, rather, it is mandatory imposition of strategies ranging from protection, accommodation, and retreat to land use decisions that may result in the taking of private property. To the extent that the Coastal Commission will rely on local agencies to implement the recommendations of the Guidance Document, we respectfully request that the Commission clarify its intention to guide development based on existing available science as opposed to setting standards by which hazard minimization is addressed. Therefore, we respectfully request that the

Guidance Document be revised to confirm that it is not a regulatory document, and will not be implemented as such.

With such an unequivocal commitment, the Coastal Commission would provide coastal cities with sufficient flexibility to implement the recommendations set forth in the Guidance Document where appropriate and based on regional and site-specific circumstances. For instance, the Guidance Document provides an approach for addressing sea-level rise that may only be appropriate in areas that have not been highly urbanized. This is especially the case where the Guidance Document provides good suggestions to promote a comprehensive assessment and development of policies for hazard avoidance mitigation by developing shoreline management plans and beach nourishment plans. Clearly, the Guidance Document's encouragement to perform adaptive planning at the regional level and to establish a transfer of development credits program are helpful suggestions for areas that have not been urbanized. However, in highly urbanized areas, coastal resources can be very limited and options for managed retreat may not exist.

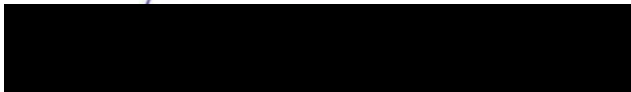
In this same vein, the Guidance Document should clarify its intent as distinguishing development within, and adjacent to, harbors and the open seas. The Guidance Document presents some ambiguities for the protection of harbors from potential flooding due to sea-level rise. As you must be aware, harbor flood defenses include jetties, seawalls, groins, tide gates, storm water pump systems, groundwater dewatering systems, and elevated finished floor elevations. However, these harbor flood defenses are only effective when working together. These flood defense measures, especially the public and private seawalls, act as a unit to protect residential, commercial and industrial properties and facilities around in coastal zone including boat yards, fuel stations, marine supply facilities, recreational facilities, tourist-serving facilities, houses, hotels, and restaurants. These flood protection defenses allow for commercial and recreational boating and fishing activities, as well as safe beach access for residents and visitors. It is important to note that these defense measures allow all property owners to participate in federal flood insurance program. We believe that the Guidance Document should be revised to reflect that several items in the Guidance Document would not be applicable in urbanized areas or to the maintenance, replacement or protection measures of property and facilities in, around and adjacent to a harbor's flood protection facilities.

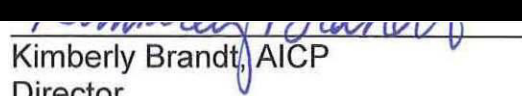
Principle 12 correctly calls for addressing sea-level rise impacts in a regional context. However, there is a missed opportunity here to call for collaboration and cooperation between local agencies in addressing sea-level rise on a regional basis. One city's efforts to address sea-level rise would be meaningless if there is no coordination with neighboring cities. Therefore, there is an opportunity here for the Coastal Commission to facilitate not only vertical cooperation (State to City), but also horizontal cooperation (City to City).

The vision statement in your newly-adopted strategic plan calls for a California Coastal Commission that “works collaboratively local governments, other agencies, and an engaged and knowledgeable public.” Rather than impose guidance from the top down, the Guidance Document provides a perfect opportunity for regional coordination among local governments and stakeholders (Principle 15) that will continue to have the ultimate responsibility for addressing sea-level rise. As this is a long-range planning document, there is ample time for Commission staff to meet directly with representatives of local governments and collaborate on a document that will provide practical guidance on addressing the consequences of sea-level rise. The City of Newport Beach is willing to take the lead in forming a local government working group that will sit down with Commission staff to complete the Guidance Document.

Thank you for the opportunity to comment on the Guidance Document and we look forward collaborating on it further.

Sincerely,

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Kimberly Brandt, AICP
Director